

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JULY 3, 2014

AMENDED IN SENATE JUNE 18, 2014

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1399

Introduced by Assembly Members Medina and V. Manuel Pérez

March 11, 2013

An act to add Section 26011.9 to the Public Resources Code, ~~and to amend Section 18410.2 of~~, and to add and repeal Sections 12283, 17053.9, and 23622.9 ~~of~~, of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, Medina. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing law also creates the California Competes Tax Credit Committee, which has specified duties in regard to tax credits for economic development.

Existing law imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

This bill would allow a credit under the Personal Income Tax Law and the Corporation Tax Law, and a credit against the tax imposed on an insurer, in modified conformity with a federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2015, and before January 1, 2027, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to an amount equal to any portion not granted under a specified sales and use tax exclusion, not to exceed \$40,000,000 per calendar year, and would limit the allocation of the credit to a cumulative total of no more than \$200,000,000, as provided. This bill would impose specified duties on the California Competes Tax Credit Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) While many areas of California have recovered from the
- 3 economic and community development impacts of the 2006
- 4 Financial Crisis and the 2010 global recession, Californians in a
- 5 number of communities and neighborhoods are still experiencing
- 6 their lingering effects. In some cases this has resulted in small and
- 7 medium businesses in low-income areas lacking sufficient access
- 8 to capital and technical assistance. Given that the state has many
- 9 needs and limited resources, moneys from the private sector are
- 10 necessary to fill this capital and investment gap.
- 11 (b) Initially enacted in 2000, the federal government established
- 12 the New Markets Tax Credit (NMTC) Program, which uses a
- 13 market-based approach for expanding capital and technical
- 14 assistance to businesses in lower income communities. The federal
- 15 program is jointly administered by the Community Development
- 16 Financial Institutions Fund (CDFI Fund) and the Internal Revenue
- 17 Service. The NMTC Program allocates federal tax incentives to

community development entities (CDE), which they then use to attract private investors who contribute funds that can be used to finance and invest in businesses and develop real estate in low-income communities. Through ~~May 2013~~ *the 2013–14 funding round*, the CDFI Fund had awarded approximately ~~\$36,500,000,000~~ *\$40,000,000,000* in NMTC in ~~749~~ *836* awards including \$3,000,000,000 in American Recovery and Investment Act of 2009 awards and \$1,000,000,000 of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

(c) The federal NMTC totals 39 percent of the original investment amount in the CDE and is claimed over a period of seven years (5 percent for each of the first three years, and 6 percent for each of the remaining four years). The investment by the taxpayer in the CDE redeemed before the end of the seven-year period will be recaptured.

(d) Fourteen states in the United States have adopted state programs using the NMTC model including Alabama, Florida, Illinois, Nevada, and Oregon. While some of the programs substantially mirror the federal program, others vary in both the percentage of the credit and some of the policies that form the foundation of the credit. One of the reasons cited for establishing state-level programs is to make their state more attractive to CDEs, which results in increasing the amount of federal NMTCs being utilized in their state. Further, several studies, including a January 1, 2011, case study by Pacific Community Ventures, showed that for every dollar of forgone tax revenue, the federal NMTC leverages \$12 to \$14 of private investment.

SEC. 2. Section 26011.9 is added to the Public Resources Code, to read:

26011.9. The authority shall make a determination of the amount of the one hundred million dollars (\$100,000,000) in exclusions not granted in the assigned calendar year pursuant to Section 26011.8. An amount equal to that amount shall be granted in the subsequent calendar year through the California New Markets Tax Credit Program pursuant to Sections 12283, 17053.9, and 23622.9 of the Revenue and Taxation Code. This section shall not prevent a taxpayer granted an exclusion pursuant to Section 6010.8 of the Revenue and Taxation Code from applying for, and

1 receiving a refund for, taxes paid under Part 1 (commencing with
2 Section 6001) of Division 2 of the Revenue and Taxation Code.

3 SEC. 3. Section 12283 is added to the Revenue and Taxation
4 Code, to read:

5 12283. (a) There is hereby created the California New Markets
6 Tax Credit Program as provided in this section, Section 17053.9,
7 and Section 23622.9. The purpose of this program is to stimulate
8 private sector investment in lower income communities by
9 providing a tax incentive to ~~qualified~~ community and economic
10 development entities that can be leveraged by the entity to attract
11 private sector investment that in turn will be deployed by providing
12 financing and technical assistance to small- and medium-size
13 businesses and the development of commercial, industrial, and
14 community development projects, including, but not limited to,
15 facilities for nonprofit service organizations, light manufacturing,
16 and mixed-use and transit-oriented development. The California
17 Competes Tax Credit Committee shall administer this program as
18 provided in this section, Section 17053.9, and Section 23622.9.

19 (b) (1) For taxable years beginning on or after January 1, 2015,
20 and before January 1, 2027, there shall be allowed as a credit
21 against the tax described in Sections 12201, 12204, 12206, and
22 12209, an amount determined in accordance with Section 45D of
23 the Internal Revenue Code, as amended by Public Law 111-5,
24 Public Law 111-312, and Public Law 112-240, as modified as set
25 forth in this section.

26 (2) This credit shall be allowed only if the taxpayer holds the
27 qualified equity investment, or has been allocated a credit pursuant
28 to paragraph (3), on the credit allowance date and each of the six
29 following anniversary dates of that date.

30 (3) A tax credit allowed under this section shall not be sold and
31 is not a refundable credit. Tax credits allowed or allocated ~~to a~~
32 ~~partnership, limited liability company, or "S" corporation through~~
33 ~~a pass-thru entity~~ may be allocated to the ~~partners, members,~~
34 ~~managers, partners~~ or shareholders of such entity for their use in
35 accordance with the provisions of any agreement among such
36 ~~partners, members, managers, partners~~ or shareholders. Such
37 allocations shall not be considered a sale for the purposes of this
38 section.

39 (A) *The credit shall be allocated to the partners of a partnership*
40 *in accordance with the partnership agreement, regardless of how*

1 *the federal New Markets Tax Credit is allocated to the partners,*
2 *or whether the allocation of the credit under the terms of the*
3 *agreement has substantial economic effect, within the meaning of*
4 *Section 704(b) of the Internal Revenue Code.*

5 *(B) To the extent the allocation of the credit to a partner under*
6 *this section lacks substantial economic effect, any loss or deduction*
7 *otherwise allowable under this part that is attributable to the sale*
8 *or other disposition of that partner's partnership interest made*
9 *prior to the expiration of the recapture period set forth in Section*
10 *45D(g)(1) of the Internal Revenue Code shall not be allowed in*
11 *the taxable year in which the sale or other disposition occurs, but*
12 *shall instead be deferred until and treated as if it occurred in the*
13 *first taxable year immediately following the taxable year in which*
14 *that recapture period expires.*

15 *(C) Credits awarded to an "S" corporation shall be allocated*
16 *among the shareholders of the "S" corporation pro rata in*
17 *accordance with their respective pro rata shares, determined in*
18 *accordance with Subchapter S of Chapter 1 of Subtitle A of the*
19 *Internal Revenue Code and the regulations promulgated*
20 *thereunder.*

21 *(c) Section 45D of the Internal Revenue Code is modified as*
22 *follows:*

23 *(1) (A) The references to "the Secretary" in Section 45D of the*
24 *Internal Revenue Code, other than in Sections 45D(c)(1)(C) and*
25 *45D(d)(1)(C), are modified to read "the ~~committee.~~ committee."*

26 *(B) For purposes of this section, "committee" means the*
27 *California Competes Tax Credit Committee established under*
28 *Section 18410.2.*

29 *(2) Section 45D(a)(2) of the Internal Revenue Code, relating to*
30 *applicable percentage, is modified by substituting for "(A) 5*
31 *percent with respect to the first 3 credit allowance dates, and (B)*
32 *6 percent with respect to the remainder of the credit allowance*
33 *dates" with the following:*

34 *(A) Zero percent with respect to the first two credit allowance*
35 *dates.*

36 *(B) Seven percent with respect to the third credit allowance*
37 *date.*

38 *(C) Eight percent with respect to the remainder of the credit*
39 *allowance dates.*

1 (3) Section 45D(b)(3) of the Internal Revenue Code, relating
2 to safe harbor for determining use of cash, is modified by
3 substituting “qualified low-income community investments in
4 California” for “qualified low-income community investments.”

5 (4) (A) Section 45D(c)(1) of the Internal Revenue ~~Code,~~
6 ~~relating to qualified community development entities,~~ *Code* is
7 modified to additionally include:

8 (i) A subsidiary community development entity of any such
9 qualified community development entity.

10 (ii) A nonprofit organization, pursuant to Section 23701,
11 certified by the committee as having a primary mission of serving
12 or providing investment capital in low-income communities and
13 the entity maintains accountability to residents of low-income
14 communities through their representation on any governing board
15 of the entity or on an advisory board of the entity. The committee
16 shall establish guidelines for certifying nonprofit organizations
17 pursuant to this subparagraph. The committee may include
18 reasonable conditions on the certification to effectuate the intent
19 of this section and may suspend or revoke a certification, after
20 affording the nonprofit organization notice and the opportunity to
21 ~~be heard,~~ *heard and appeal,* if the committee finds that the
22 nonprofit organization no longer meets the requirements for
23 certification. Such nonprofit organization is not subject to the
24 requirement of subparagraph (B).

25 (B) Section 45D(c)(1) of the Internal Revenue ~~Code, relating~~
26 ~~to a qualified community development entity,~~ *Code* is modified
27 to only include a qualified community development entity that has
28 entered into an allocation agreement with the Community
29 Development Financial Institutions Fund of the United States
30 Treasury Department, with respect to credits authorized by Section
31 45D of the Internal Revenue Code, that includes California within
32 the service area and is dated on or after January 1, 2012.

33 (5) Section 45D(d)(1)(A) of the Internal Revenue ~~Code, relating~~
34 ~~to qualified low-income community investments,~~ *Code* is modified
35 to only include any capital or equity investment in, or loan to, a
36 qualified active low-income community business.

37 (6) The term “qualified active low-income community business,”
38 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
39 modified as follows:

1 (A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code,
2 ~~relating to qualified active low-income community businesses;~~
3 ~~Code~~ is modified by substituting “any low-income community in
4 California” for “any low-income community.”

5 (B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code,
6 ~~relating to qualified active low-income community businesses;~~
7 ~~Code~~ is modified as follows:

8 (i) Substituting “any low-income community in California” for
9 “any low-income community.”

10 (ii) In determining whether the qualified active low-income
11 community business uses a substantial portion of its tangible
12 personal property within any low-income community, the term
13 “substantial portion” shall mean “at least 40 percent” as calculated
14 by the average value of the tangible property owned or leased and
15 used within a California low-income community by the entity
16 divided by the average value of the total tangible property owned
17 or leased and used by the entity in California during the taxable
18 year. The value assigned to the leased property by the entity must
19 be reasonable.

20 (iii) Adding the provision that if the business meets the
21 requirements of a qualified low-income community business at
22 the time the investment is made, the business shall ~~continue to~~
23 ~~satisfy~~ *be treated as satisfying* the requirements of Section
24 45D(d)(2)(A)(ii) for the duration of the investment.

25 (C) *An entity complies with Section 45D(d)(2)(A)(i) of the*
26 *Internal Revenue Code if, as calculated in subparagraph (B), it*
27 *uses 50 percent of its tangible property, whether owned or leased,*
28 *within any low-income community for any taxable year.*

29 (E)

30 (D) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code,
31 ~~relating to qualified active low-income community business, a~~
32 ~~substantial portion of the services of which are performed in a~~
33 ~~low-income community;~~ ~~Code~~ is modified to allow the services
34 of employees of a service-based qualified business to be performed
35 outside the low-income community. A service-based qualified
36 business is a business that primarily earns revenue through
37 providing intangible products and services.

38 ~~(D) An entity complies with Section 45D(d)(2)(A)(i) of the~~
39 ~~Internal Revenue Code, relating to qualified active low-income~~
40 ~~community business, if, as calculated in subparagraph (B), it uses~~

1 50 percent of its tangible property, whether owned or leased, within
2 any low-income community for any taxable year.

3 (E) (i) A qualified active low-income community business shall
4 exclude any business that derives, or projects to derive, 15 percent
5 or more of its annual revenue from the rental or sale of real estate.
6 This exclusion does not apply to a business that is controlled by,
7 or under common control with, another business if the second
8 business: (I) does not derive or project to derive 15 percent or more
9 of its annual revenue from the rental or sale of real estate; and (II)
10 is the primary tenant of the real estate leased from the first business.

11 (ii) A qualified active low-income community business shall
12 only include a business that, at the time the initial investment is
13 made, has 250 or fewer employees and is located in a California
14 low-income community. The operating business shall meet all
15 other conditions of a qualified active low-income business, except
16 as modified by this paragraph and paragraph (7).

17 (iii) A qualified active low-income community business shall
18 only include a business located in census tracts with a poverty rate
19 greater than 30 percent, or census tracts, if located within a
20 non-metropolitan area, with a median family income that does not
21 exceed 60 percent of median family income for the State of
22 California, or census tracts, if located within a metropolitan area,
23 with a median family income that does not exceed 60 percent of
24 the greater of the California median family income or the
25 metropolitan area median family income, or census tracts with
26 unemployment rates at least 1.5 times the national average.

27 (7) Section 45D(e)(1) of the Internal Revenue Code, relating to
28 determining the eligible low-income community, Code is modified
29 to add the following: “When the United States Census Bureau
30 discontinues using the decennial census to report median family
31 income on a census tract basis, census block group data shall be
32 used based on the American Community Survey.”

33 (8) The following shall apply in lieu of the provisions of Section
34 ~~45D(f)(1)~~ 45D(f) of the Internal Revenue Code, relating to national
35 limitation on amount of investments designated: “The aggregate
36 amount of credit that may be allocated in any calendar year
37 pursuant to this section, Section 17053.9, and Section 23622.9
38 shall be an amount equal to any unused portion of the one hundred
39 million dollars (\$100,000,000) in exclusions, authorized pursuant
40 to Section 6010.8, as determined by the California Alternative

Energy and Advanced Transportation Financing Authority and reported to the committee, not to exceed forty million dollars (\$40,000,000). The committee shall limit the allocation of credits permitted under this section, Section 17053.9, and Section 23622.9 to a cumulative total of no more than two hundred million dollars (\$200,000,000). Any unused credits shall be returned to the committee ~~on~~ by March 1 of the year following allocation and the value of the unused credit shall be available for allocation in the following calendar years in accordance with the application process. Any recaptured credits shall be returned to the committee by March 1 of the year following recapture and the value of the recaptured credit shall be available for allocation in the following calendar years in accordance with subparagraph (B) of paragraph (9). Reallocation credits shall not count against the forty million dollars (\$40,000,000) annual limit or the two hundred million dollars (\$200,000,000) cumulative limit.”

(9) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, does not apply and is replaced with the following:

(A) The committee shall ~~recapture; establish a process, in consultation with the Department of Insurance, for the recapture of credits allowed under this section from the entity that claimed the credit on a return, the tax credit allowed under this section if any of the following; return. The recapture process shall be applied if any of the following conditions set forth occur.~~

(i) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this section is recaptured under Section 45D of the Internal Revenue Code. *The qualified community development entity shall send notice to the committee within 30 calendar days of being notified by the United States Treasury that any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this section is recaptured. The committee shall send written acknowledgment within five calendar days of receipt of the qualified community development entity's notice of potential noncompliance.* In such case the ~~committee's~~ recapture shall be proportionate to the federal recapture with respect to such qualified equity investment.

(ii) The qualified community development entity redeems or makes principal repayment with respect to a qualified equity

1 investment prior to the seventh anniversary of the issuance of such
2 qualified equity investment. *The qualified community development*
3 *entity shall send notice to the committee within 30 calendar days*
4 *of redeeming or making principal repayments with respect to a*
5 *qualified equity investment prior to the seventh anniversary of the*
6 *issuance of such qualified equity investment. The committee shall*
7 *send written acknowledgment within five calendar days of receipt*
8 *of the qualified community development entity's notice of potential*
9 *noncompliance.* In such case the committee's recapture shall be
10 proportionate to the amount of the redemption or repayment with
11 respect to such qualified equity investment.

12 (iii) The qualified community development entity fails to invest
13 an amount equal to at least 85 percent of the purchase price of the
14 qualified equity investment in qualified low-income community
15 investments in California within 12 months of the issuance of the
16 qualified equity investment and maintain at least 85 percent of
17 such level of investment in qualified low-income community
18 investments in California until the last credit allowance date for
19 the qualified equity investment. For purposes of this section, an
20 investment shall be considered held by a qualified community
21 development entity even if the investment has been sold or repaid
22 if the qualified community development entity reinvests an amount
23 equal to the capital returned to, or recovered by, the qualified
24 community development entity from the original investment,
25 exclusive of any profits realized, in another qualified low-income
26 community investment within 12 months of the receipt of such
27 capital. *The qualified community development entity shall send*
28 *notice to the committee within 30 calendar days of the 12-month*
29 *deadline for the reinvestment if the entity fails to meet any of the*
30 *reinvestment requirements. The committee shall send written*
31 *acknowledgment within five calendar days of receipt of the*
32 *qualified community development entity's notice of potential*
33 *noncompliance.* Periodic amounts received as repayment of
34 principal pursuant to regularly scheduled amortization payments
35 on a loan that is a qualified low-income community investment
36 shall be treated as continuously invested in a qualified low-income
37 community investment if the amounts are reinvested in one or
38 more qualified low-income community investments by the end of
39 the following calendar year. A qualified community development
40 entity shall not be required to reinvest capital returned from

1 qualified low-income community investments after the sixth
2 anniversary of the issuance of the qualified equity investment, and
3 the qualified low-income community investment shall be
4 considered held by the qualified community development entity
5 through the seventh anniversary of the qualified equity investment's
6 issuance.

7 (B) Recaptured tax credits and the related qualified equity
8 investment authority revert back to the committee and shall be
9 reissued in the following order:

10 (i) First, pro rata to applicants whose qualified equity investment
11 allocations were reduced pursuant to subparagraph (B) of paragraph
12 (5) of subdivision (d) by the allocation limitation of forty million
13 dollars (\$40,000,000) in paragraph (8) of subdivision (c).

14 (ii) Thereafter, in accordance with the application process.

15 (C) (i) Enforcement of each of the recapture provisions shall
16 be subject to a six-month cure period. ~~No recapture~~ *Recapture*
17 shall *not* occur until the qualified community development entity
18 ~~shall have been given~~ *gives* notice of *potential* noncompliance to
19 *the committee* and is afforded six months from the date of such
20 notice to cure the noncompliance. *The six-month cure period shall*
21 *begin on the day the committee sends written acknowledgment of*
22 *the qualified community development entity's notice of the potential*
23 *noncompliance. The qualified community development entity is*
24 *responsible for addressing the circumstances of the potential*
25 *noncompliance and providing all documentation to the committee*
26 *necessary to demonstrate, to the committee's satisfaction, that*
27 *those conditions no longer exist.*

28 (ii) *Not more than 45 calendar days following the close of the*
29 *cure period, the committee shall make a final determination as to*
30 *whether the credit is to be recaptured. This determination shall*
31 *be based on the review of the notice, information submitted by the*
32 *qualified community development entity, and any other information*
33 *the committee deems relevant to this determination.*

34 (iii) *The committee shall post, and update monthly, a tally of*
35 *returned credits, pursuant to paragraph (8), and recaptured credits*
36 *pursuant to this paragraph. Within 30 calendar days of making*
37 *the final determination that the credit is to be recaptured, the*
38 *committee shall notify the Department of Insurance of the*
39 *determination including, but not limited to, the tax identification*
40 *number of the taxpayer.*

1 (10) Section 45D(h) of the Internal Revenue Code, relating to
2 basis reduction, shall not apply.

3 ~~(10)~~

4 (11) Section 45D(i) of the Internal Revenue Code, relating to
5 regulations, shall not apply.

6 ~~(11) Section 45D(h) of the Internal Revenue Code, relating to~~
7 ~~basis, shall not apply.~~

8 (12) If a qualified community development entity makes a
9 capital or equity investment or a loan with respect to a qualified
10 low-income building under the state Low-Income *Housing* Tax
11 Credit Program, the investment or loan is not a qualified
12 low-income community investment under this section.

13 (d) (1) The committee shall adopt guidelines necessary or
14 appropriate to carry out the purposes of this section *and meet the*
15 *requirements of Section 45D of the Internal Revenue Code, as*
16 *modified by this section.* The guidelines shall not disqualify a
17 low-income community investment for the single reason that public
18 or private incentives, loans, equity investments, technical
19 assistance, or other forms of support have been or continue to be
20 provided. The adoption of the guidelines shall not be subject to
21 the rulemaking provisions of the Administrative Procedure Act of
22 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
23 3 of Title 2 of the Government Code.

24 (2) The committee shall establish and impose reasonable fees
25 upon entities that apply for the allocation pursuant to this
26 subdivision and use the revenue to defray the cost of administering
27 the program. The committee shall establish the fees in a manner
28 that ensures that (A) the total amount collected equals the amount
29 reasonably necessary to defray the committee's costs in performing
30 its administrative duties under this section, and (B) the amount
31 paid by each entity reasonably corresponds with the value of the
32 services provided to the entity.

33 (3) In developing guidelines the committee shall adopt an
34 allocation process that does all of the following:

35 (A) Creates an equitable distribution process that ensures that
36 low-income communities across the state have an opportunity to
37 benefit from the program.

38 (B) Sets minimum organizational capacity standards that
39 applicants must meet in order to receive an allocation of credits
40 including, but not limited to, its business strategy, *targeted*

community outcomes, capitalization strategy, and management capacity.

(4) (A) The committee shall begin accepting applications on or before March 15, 2015, and shall award credits at least two times a year at dates set annually by the committee through 2019, to the extent that allocations are available pursuant to Section 26011.9 of the Public Resources Code. To the extent reasonable and consistent in carrying out the purposes of this section, the committee shall consider how the timing of the state allocation rounds correspond with the allocation schedule of the federal New Markets Tax Credit Program.

(B) Within 20 calendar days after receipt of an application the committee shall determine whether the application is complete or whether additional information is necessary in order to fully evaluate the application. If additional information is requested and the qualified community development entity provides that information within five business days, the application shall be considered completed as of the original date of receipt. If the qualified community development entity fails to provide the information within the five-business-day period, the application shall be denied and must be resubmitted in full with a new receipt date.

(C) Within 20 calendar days after receipt of an application determined to be complete by the committee, the committee shall grant or deny the application in full or in part. If the committee denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial.

(5) (A) The committee shall award tax credits to qualified community development entities described in subparagraph (B) of paragraph (4) of subdivision (c) in the order applications are received by the committee, *subject to clause (i) or on a competitive basis, pursuant to clause (ii).* ~~Applications received on the same day shall be deemed to have been received simultaneously.~~

(i) (I) In 2015, the committee shall only award tax credits to a qualified community development entity, ~~exclusive of an entity described in clause (ii) of subparagraph (A) of paragraph (4) of subdivision (c)~~ *entity in the order applications are received by the committee.* In the 2016 to 2019 award cycles, inclusive, at least 60 percent of the credit allocation shall be awarded to a qualified community development entity, ~~exclusive of an entity described~~

1 ~~in clause (ii) of subparagraph (A) of paragraph (4) of subdivision~~
2 ~~(e) in the order applications are received by the committee to a~~
3 ~~qualified community development entity. Applications received on~~
4 ~~the same day shall be deemed to have been received~~
5 ~~simultaneously. At the committee's discretion, a higher percentage~~
6 ~~of credits may be targeted to applicants exclusive of an awarded~~
7 ~~in the order that they are received. Qualified community~~
8 ~~development entities that receive tax credit awards pursuant to~~
9 ~~this clause shall commit to making investments in a manner that~~
10 ~~engages community-based partnerships and local grassroots~~
11 ~~stakeholders.~~

12 (II) An entity described in clause (ii) of subparagraph (A) of
13 paragraph (4) of subdivision (c) shall not receive a tax credit award
14 pursuant to this clause.

15 (ii) The committee shall award up to 40 percent of the credit
16 allocation in the 2016 to 2019, inclusive, award cycles, to a
17 qualified community development entity, as described in clause
18 (ii) of subparagraph (A) of paragraph (4) of subdivision (c) and
19 subparagraph (B) of paragraph (4) of subdivision (c), on a
20 competitive basis using blind scoring and a review committee that
21 is comprised of at least a majority of community development
22 finance practitioners *and at least one-third of the members having*
23 *demonstrated experience in assessing organizational business*
24 *strategy, community outcomes, capitalization strategy, and*
25 *management capacity.* A member of the review committee shall
26 not have a financial interest, which includes, but is not limited to,
27 asking, consenting, or agreeing to receive any commission,
28 emolument, gratuity, money, property, or thing of value for his or
29 her own use, benefit, or personal advantage for procuring or
30 endeavoring to procure for any person, partnership, joint venture,
31 association, or corporation any tax credit or other assistance from
32 any applicant. ~~Priority~~

33 (iii) *In awarding credits on a competitive basis, priority shall*
34 *be given to applications that can demonstrate that the credits will*
35 *allow the entity to undertake qualified low-income community*
36 *investments in a rural, suburban, or urban area that has been*
37 *historically underserved and result in the greatest benefit to the*
38 *hardest to serve lower income populations and most*
39 *undercapitalized, or in newly established businesses, or in activities*
40 *that support neighborhood revitalization strategies driven by local*

1 *grassroots stakeholders in multiple low-income communities across*
2 *one or more regions or the state for the purpose of scaling*
3 *economic development activities that compliment regional industry*
4 *clusters that—results result in the greatest benefit to the largest*
5 *number of lower income individuals. All competitive applications*
6 *shall demonstrate strong linkages with communities and*
7 *neighborhoods in California low-income neighborhoods.*

8 (B) For applications described in clause (i) of subparagraph
9 (A), in the event tax credit requests exceed the applicable annual
10 allocation limitation of up to forty million dollars (\$40,000,000)
11 in paragraph (8) of subdivision (c), the committee shall certify,
12 consistent with remaining qualified equity investment capacity,
13 qualified equity investments of applicants in proportionate
14 percentages based upon the ratio of the amount of qualified equity
15 investments requested in such applications to the total amount of
16 qualified equity investments requested in all such applications
17 received on the same day.

18 (C) If a pending request cannot be fully certified due to this
19 limit, the committee shall certify the portion that may be certified
20 unless the qualified community development entity elects to
21 withdraw its request rather than receive partial certification.

22 (D) An approved applicant may transfer all or a portion of its
23 certified qualified equity investment authority to its controlling
24 entity or any subsidiary qualified community development entity
25 of the controlling entity, provided that the applicant and the
26 transferee notify the committee *within 30 calendar days* of such
27 transfer and include the information required in the application
28 with respect to such transferee with such notice.

29 (E) Within 60 calendar days of the committee sending notice
30 of certification, the qualified community development entity or
31 any transferee, under subparagraph (D), shall issue the qualified
32 equity investment and receive cash in the amount of the certified
33 amount. The qualified community development entity or transferee,
34 under subparagraph (D), must provide the committee with evidence
35 of the receipt of the cash investment within 65 *calendar* days of
36 the applicant receiving notice of certification. If the qualified
37 community development entity or any transferee, under
38 subparagraph (D), does not receive the cash investment and issue
39 the qualified equity investment within 60 calendar days of the
40 committee sending the certification notice, the certification shall

1 lapse and the entity may not issue the qualified equity investment
2 without reapplying to the committee for certification. Lapsed
3 certifications revert back to the committee and shall be reissued
4 in the following order:

5 (i) First, pro rata to applicants whose qualified equity investment
6 allocations were reduced pursuant to subparagraph (B) of paragraph
7 (5) under the annual allocation limitation of forty million dollars
8 (\$40,000,000) in paragraph (8) of subdivision (c).

9 (ii) Thereafter, in accordance with the application process.

10 (F) A qualified community development entity that issues
11 qualified equity investments must notify the committee of the
12 names of the entities that are eligible to utilize tax credits under
13 paragraph (3) of subdivision (b) pursuant to an allocation of tax
14 credits or change in allocation of tax credits or due to a transfer of
15 a qualified equity investment.

16 (6) (A) A qualified community development entity that issues
17 qualified equity investments shall submit a report to the committee
18 within the first five business days after the first anniversary of the
19 initial credit allowance date that provides documentation as to the
20 investment of at least 85 percent of the purchase price in qualified
21 low-income community investments in qualified active low-income
22 community businesses located in California. Such report shall
23 include all of the following:

24 (i) A bank statement of such qualified community development
25 entity evidencing each qualified low-income community
26 investment.

27 (ii) Evidence that such business was a qualified active
28 low-income community business at the time of such qualified
29 low-income community investment.

30 (iii) Any other information required by the committee.

31 (B) Thereafter, the qualified community development entity
32 shall submit an annual report to the committee within 60 *calendar*
33 days of the beginning of the calendar year during the seven years
34 following submittal of the report, pursuant to subparagraph (A).
35 No annual report shall be due prior to the first anniversary of the
36 initial credit allowance date. The report shall include, but is not
37 limited to, the following:

38 (i) The impact the credit had on the low-income community.

39 (ii) The amount of moneys used for qualified low-income
40 investments in qualified low-income community businesses.

1 (iii) The number of employment positions created and retained
2 as a result of qualified low-income community investments and
3 the average annual salary of such positions.

4 (iv) The number of operating businesses assisted as a result of
5 qualified low-income community investments, by industry and
6 number of employees.

7 (v) Number of owner-occupied real estate projects described in
8 subparagraph (E) of paragraph (6) of subdivision (c).

9 (vi) Location of the qualified low-income community businesses.

10 (e) In the case where the credit allowed by this section exceeds
11 the tax described in Sections 12201, 12204, 12206, and 12209, the
12 excess may be carried over to reduce that tax in the following year,
13 and the six succeeding years if necessary, until the credit is
14 exhausted.

15 (f) The committee shall annually report on its Internet Web site
16 the information provided by low-income community development
17 entities and on the geographic distribution of the credits.

18 (g) (1) ~~The Franchise Tax Board~~ *Insurance Commissioner* may
19 prescribe any rules or regulations that may be necessary or
20 appropriate to implement this section. ~~The Franchise Tax Board~~
21 *Insurance Commissioner* shall have access to any documentation
22 held by the committee relative to the application and reporting of
23 a qualified community development entity.

24 (2) A qualifying community development entity shall provide
25 the committee with the name, address, and tax identification
26 number of each investor and entity for which a credit was allocated
27 by the qualifying community development entity, pursuant to
28 paragraph (3) of subdivision (b). The committee shall provide this
29 information to the Franchise Tax Board in a manner determined
30 by the Franchise Tax Board.

31 (h) This section shall remain in effect only until December 1,
32 2028, and as of that date is repealed.

33 SEC. 4. Section 17053.9 is added to the Revenue and Taxation
34 Code, to read:

35 17053.9. (a) There is hereby created the California New
36 Markets Tax Credit Program as provided in this section, Section
37 12283, and Section 23622.9. The purpose of this program is to
38 stimulate private sector investment in lower income communities
39 by providing a tax incentive to ~~qualified~~ community and economic
40 development entities that can be leveraged by the entity to attract

1 private sector investment that in turn will be deployed by providing
2 financing and technical assistance to small- and medium-size
3 businesses and the development of commercial, industrial, and
4 community development projects, including, but not limited to,
5 facilities for nonprofit service organizations, light manufacturing,
6 and mixed-use and transit-oriented development. The California
7 Competes Tax Credit Committee shall administer this program as
8 provided in this section, Section 12283, and Section 23622.9.

9 (b) (1) For taxable years beginning on or after January 1, 2015,
10 and before January 1, 2027, there shall be allowed as a credit
11 against the “net tax,” as defined in Section 17039, an amount
12 determined in accordance with Section 45D of the Internal Revenue
13 Code, as amended by Public Law 111-5, Public Law 111-312, and
14 Public Law 112-240, as modified as set forth in this section.

15 (2) This credit shall be allowed only if the taxpayer holds the
16 qualified equity investment, or has been allocated a credit pursuant
17 to paragraph (3), on the credit allowance date and each of the six
18 following anniversary dates of that date.

19 (3) A tax credit allowed under this section shall not be sold and
20 is not a refundable credit. Tax credits allowed or allocated to a
21 ~~partnership, limited liability company, or “S” corporation~~ through
22 ~~a pass-thru entity~~ may be allocated to the partners, ~~members,~~
23 ~~managers,~~ or shareholders of such entity for their use in accordance
24 with the provisions of any agreement among such partners;
25 ~~members, managers,~~ or shareholders. Such allocations shall not
26 be considered a sale for the purposes of this section.

27 (A) *The credit shall be allocated to the partners of a partnership*
28 *in accordance with the partnership agreement, regardless of how*
29 *the federal New Markets Tax Credit is allocated to the partners,*
30 *or whether the allocation of the credit under the terms of the*
31 *agreement has substantial economic effect, within the meaning of*
32 *Section 704(b) of the Internal Revenue Code.*

33 (B) *To the extent the allocation of the credit to a partner under*
34 *this section lacks substantial economic effect, any loss or deduction*
35 *otherwise allowable under this part that is attributable to the sale*
36 *or other disposition of that partner’s partnership interest made*
37 *prior to the expiration of the recapture period set forth in Section*
38 *45D(g)(1) of the Internal Revenue Code shall not be allowed in*
39 *the taxable year in which the sale or other disposition occurs, but*
40 *shall instead be deferred until and treated as if it occurred in the*

1 *first taxable year immediately following the taxable year in which*
2 *that recapture period expires.*

3 (C) Credits awarded to an “S” corporation shall be allocated
4 among the shareholders of the “S” corporation pro rata in
5 accordance with their respective pro rata shares, determined in
6 accordance with Subchapter S of Chapter 1 of Subtitle A of the
7 Internal Revenue Code and the regulations promulgated
8 thereunder.

9 (c) Section 45D of the Internal Revenue Code is modified as
10 follows:

11 (1) (A) The references to “the Secretary” in Section 45D of the
12 Internal Revenue Code, *other than in Sections 45D(c)(1)(C) and*
13 *45D(d)(1)(C), are modified to read “the committee.”*

14 (B) For purposes of this section, “committee” means the
15 California Competes Tax Credit Committee established under
16 Section 18410.2.

17 (2) Section 45D(a)(2) of the Internal Revenue Code, relating to
18 applicable percentage, is modified by substituting for “(A) 5
19 percent with respect to the first 3 credit allowance dates, and (B)
20 6 percent with respect to the remainder of the credit allowance
21 dates” with the following:

22 (A) Zero percent with respect to the first two credit allowance
23 dates.

24 (B) Seven percent with respect to the third credit allowance
25 date.

26 (C) Eight percent with respect to the remainder of the credit
27 allowance dates.

28 (3) Section 45D(b)(3) of the Internal Revenue Code, relating
29 to safe harbor for determining use of cash, is modified by
30 substituting “qualified low-income community investments in
31 California” for “qualified low-income community investments.”

32 (4) (A) Section 45D(c)(1) of the Internal Revenue Code, relating
33 to qualified community development entities, *Code* is modified to
34 additionally include:

35 (i) A subsidiary community development entity of any such
36 qualified community development entity.

37 (ii) A nonprofit organization, pursuant to Section 23701,
38 certified by the committee as having a primary mission of serving
39 or providing investment capital in low-income communities and
40 the entity maintains accountability to residents of low-income

1 communities through their representation on any governing board
2 of the entity or on an advisory board of the entity. The committee
3 shall establish guidelines for certifying nonprofit organizations
4 pursuant to this subparagraph. The committee may include
5 reasonable conditions on the certification to effectuate the intent
6 of this section and may suspend or revoke a certification, after
7 affording the nonprofit organization notice and the opportunity to
8 be ~~heard~~, *heard and appeal*, if the committee finds that the
9 nonprofit organization no longer meets the requirements for
10 certification. Such nonprofit organization is not subject to the
11 requirement of subparagraph (B).

12 (B) Section 45D(c)(1) of the Internal Revenue ~~Code, relating~~
13 ~~to a qualified community development entity~~; *Code* is modified
14 to only include a qualified community development entity that has
15 entered into an allocation agreement with the Community
16 Development Financial Institutions Fund of the United States
17 Treasury Department, with respect to credits authorized by Section
18 45D of the Internal Revenue Code, that includes California within
19 the service area and is dated on or after January 1, 2012.

20 (5) Section 45D(d)(1)(A) of the Internal Revenue ~~Code, relating~~
21 ~~to qualified low-income community investments~~; *Code* is modified
22 to only include any capital or equity investment in, or loan to, a
23 qualified active low-income community business.

24 (6) The term “qualified active low-income community business,”
25 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
26 modified as follows:

27 (A) Section 45D(d)(2)(A)(i) of the Internal Revenue ~~Code,~~
28 ~~relating to qualified active low-income community businesses~~;
29 *Code* is modified by substituting “any low-income community in
30 California” for “any low-income community.”

31 (B) Section 45D(d)(2)(A)(ii) of the Internal Revenue ~~Code,~~
32 ~~relating to qualified active low-income community businesses~~;
33 *Code* is modified as follows:

34 (i) Substituting “any low-income community in California” for
35 “any low-income community.”

36 (ii) In determining whether the qualified active low-income
37 community business uses a substantial portion of its tangible
38 personal property within any low-income community, the term
39 “substantial portion” shall mean “at least 40 percent” as calculated
40 by the average value of the tangible property owned or leased and

used within a California low-income community by the entity divided by the average value of the total tangible property owned or leased and used by the entity in California during the taxable year. The value assigned to the leased property by the entity must be reasonable.

(iii) Adding the provision that if the business meets the requirements of a qualified low-income community business at the time the investment is made, the business shall ~~continue to satisfy~~ *be treated as satisfying* the requirements of Section 45D(d)(2)(A)(ii) for the duration of the investment.

(C) *An entity complies with Section 45D(d)(2)(A)(i) of the Internal Revenue Code if, as calculated in subparagraph (B), it uses 50 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year.*

~~(C)~~

(D) Section 45D(d)(2)(A)(iii) of the Internal Revenue ~~Code, relating to qualified active low-income community business, a substantial portion of the services of which are performed in a low-income community;~~ Code is modified to allow the services of employees of a service-based qualified business to be performed outside the low-income community. A service-based qualified business is a business that primarily earns revenue through providing intangible products and services.

~~(D) An entity complies with Section 45D(d)(2)(A)(i) of the Internal Revenue Code, relating to qualified active low-income community business, if, as calculated in subparagraph (B), it uses 50 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year.~~

(E) (i) A qualified active low-income community business shall exclude any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (I) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (II) is the primary tenant of the real estate leased from the first business.

(ii) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in a California low-income community. The operating business shall meet all

1 other conditions of a qualified active low-income business, except
2 as modified by this paragraph and paragraph (7).

3 (iii) A qualified active low-income community business shall
4 only include a business located in census tracts with a poverty rate
5 greater than 30 percent, or census tracts, if located within a
6 non-metropolitan area, with a median family income that does not
7 exceed 60 percent of median family income for the State of
8 California, or census tracts, if located within a metropolitan area,
9 with a median family income that does not exceed 60 percent of
10 the greater of the California median family income or the
11 metropolitan area median family income, or census tracts with
12 unemployment rates at least 1.5 times the national average.

13 (7) Section 45D(e)(1) of the Internal Revenue Code, relating to
14 ~~determining the eligible low-income community~~, Code is modified
15 to add the following: “When the United States Census Bureau
16 discontinues using the decennial census to report median family
17 income on a census tract basis, census block group data shall be
18 used based on the American Community Survey.”

19 (8) The following shall apply in lieu of the provisions of Section
20 ~~45D(f)(1)~~ 45D(f) of the Internal Revenue Code, relating to national
21 limitation on amount of investments designated: “The aggregate
22 amount of credit that may be allocated in any calendar year
23 pursuant to this section, Section 12283, and Section 23622.9 shall
24 be an amount equal to any unused portion of the one hundred
25 million dollars (\$100,000,000) in exclusions, authorized pursuant
26 to Section 6010.8, as determined by the California Alternative
27 Energy and Advanced Transportation Financing Authority and
28 reported to the committee, not to exceed forty million dollars
29 (\$40,000,000). The committee shall limit the allocation of credits
30 permitted under this section, Section 12283, and Section 23622.9
31 to a cumulative total of no more than two hundred million dollars
32 (\$200,000,000). Any unused credits shall be returned to the
33 committee ~~on~~ by March 1 of the year following allocation and the
34 value of the unused credit shall be available for allocation in the
35 following calendar years in accordance with the application
36 process. Any recaptured credits shall be returned to the committee
37 by March 1 of the year following recapture and the value of the
38 recaptured credit shall be available for allocation in the following
39 calendar years in accordance with clause (ii) of subparagraph (B)
40 of paragraph (9). Reallocation credits shall not count against the

1 forty million dollars (\$40,000,000) annual limit or the two hundred
2 million dollars (\$200,000,000) cumulative limit.”

3 (9) (A) Section 45D(g)(2)(B) of the Internal Revenue Code,
4 relating to credit recapture amount, is modified to substitute
5 “Section 19101 of this code” for “section 6621”.

6 (B) Section 45D(g)(3) of the Internal Revenue Code, relating
7 to recapture event, does not apply and is replaced with the
8 following:

9 (i) The committee shall ~~recapture~~, *establish a process, in*
10 *consultation with the Franchise Tax Board, for the recapture of*
11 *credits allowed under this section* from the entity that claimed the
12 credit on a return, ~~the tax credit allowed under this section if any~~
13 ~~of the following~~; *return. The recapture process shall be applied*
14 *if any of the following conditions set forth occur.*

15 (I) Any amount of a federal tax credit available with respect to
16 a qualified equity investment that is eligible for a credit under this
17 section is recaptured under Section 45D of the Internal Revenue
18 Code. *The qualified community development entity shall send*
19 *notice to the committee within 30 calendar days of being notified*
20 *by the United States Treasury that any amount of a federal tax*
21 *credit available with respect to a qualified equity investment that*
22 *is eligible for a credit under this section is recaptured. The*
23 *committee shall send written acknowledgment within five calendar*
24 *days of receipt of the qualified community development entity’s*
25 *notice of potential noncompliance.* In such case the ~~committee’s~~
26 recapture shall be proportionate to the federal recapture with respect
27 to such qualified equity investment.

28 (II) The qualified community development entity redeems or
29 makes principal repayment with respect to a qualified equity
30 investment prior to the seventh anniversary of the issuance of such
31 qualified equity investment. *The qualified community development*
32 *entity shall send notice to the committee within 30 calendar days*
33 *of redeeming or making principal repayments with respect to a*
34 *qualified equity investment prior to the seventh anniversary of the*
35 *issuance of such qualified equity investment. The committee shall*
36 *send written acknowledgment within five calendar days of receipt*
37 *of the qualified community development entity’s notice of potential*
38 *noncompliance.* In such case the committee’s recapture shall be
39 proportionate to the amount of the redemption or repayment with
40 respect to such qualified equity investment.

(III) The qualified community development entity fails to invest an amount equal to at least 85 percent of the purchase price of the qualified equity investment in qualified low-income community investments in California within 12 months of the issuance of the qualified equity investment and maintain at least 85 percent of such level of investment in qualified low-income community investments in California until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to, or recovered by, the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. *The qualified community development entity shall send notice to the committee within 30 calendar days of the 12-month deadline for the reinvestment if the entity fails to meet any of the reinvestment requirements. The committee shall send written acknowledgment within five calendar days of receipt of the qualified community development entity's notice of potential noncompliance.* Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(ii) Recaptured tax credits and the related qualified equity investment authority revert back to the committee and shall be reissued in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (B)

1 of paragraph (5) of subdivision (d) by the allocation limitation of
2 forty million dollars (\$40,000,000) in paragraph (8) of subdivision
3 (c).

4 (II) Thereafter, in accordance with the application process.

5 (iii) (I) Enforcement of each of the recapture provisions shall
6 be subject to a six-month cure period. ~~No recapture~~ *Recapture*
7 shall *not* occur until the qualified community development entity
8 ~~shall have been given~~ gives notice of *potential* noncompliance to
9 the committee and is afforded six months from the date of such
10 notice to cure the noncompliance. *The six-month cure period shall*
11 *begin on the day the committee sends written acknowledgment of*
12 *the qualified community development entity's notice of the potential*
13 *noncompliance. The qualified community development entity is*
14 *responsible for addressing the circumstances of the potential*
15 *noncompliance and providing all documentation to the committee*
16 *necessary to demonstrate, to the committee's satisfaction, that*
17 *those conditions no longer exist.*

18 (II) *Not more than 45 calendar days following the close of the*
19 *cure period, the committee shall make a final determination as to*
20 *whether the credit is to be recaptured. This determination shall*
21 *be based on the review of the notice, information submitted by the*
22 *qualified community development entity, and any other information*
23 *the committee deems relevant to this determination.*

24 (III) *The committee shall post, and update monthly, a tally of*
25 *returned credits, pursuant to paragraph (8), and recaptured credits*
26 *pursuant to this paragraph. Within 30 calendar days of making*
27 *the final determination that the credit is to be recaptured, the*
28 *committee shall notify the Department of Insurance of the*
29 *determination including, but not limited to, the tax identification*
30 *number of the taxpayer.*

31 (10) Section 45D(i) of the Internal Revenue Code, relating to
32 regulations, shall not apply.

33 (11) If a qualified community development entity makes a
34 capital or equity investment or a loan with respect to a qualified
35 low-income building under the state Low-Income *Housing Tax*
36 *Credit Program*, the investment or loan is not a qualified
37 low-income community investment under this section.

38 (d) (1) The committee shall adopt guidelines necessary or
39 appropriate to carry out the purposes of this section *and meet the*
40 *requirements of Section 45D of the Internal Revenue Code, as*

1 *modified by this section.* The guidelines shall not disqualify a
2 low-income community investment for the single reason that public
3 or private incentives, loans, equity investments, technical
4 assistance, or other forms of support have been or continue to be
5 provided. The adoption of the guidelines shall not be subject to
6 the rulemaking provisions of the Administrative Procedure Act of
7 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
8 3 of Title 2 of the Government Code.

9 (2) The committee shall establish and impose reasonable fees
10 upon entities that apply for the allocation pursuant to this
11 subdivision and use the revenue to defray the cost of administering
12 the program. The committee shall establish the fees in a manner
13 that ensures that (A) the total amount collected equals the amount
14 reasonably necessary to defray the committee's costs in performing
15 its administrative duties under this section, and (B) the amount
16 paid by each entity reasonably corresponds with the value of the
17 services provided to the entity.

18 (3) In developing guidelines the committee shall adopt an
19 allocation process that does all of the following:

20 (A) Creates an equitable distribution process that ensures that
21 low-income communities across the state have an opportunity to
22 benefit from the program.

23 (B) Sets minimum organizational capacity standards that
24 applicants must meet in order to receive an allocation of credits
25 including, but not limited to, its business strategy, *targeted*
26 community outcomes, capitalization strategy, and management
27 capacity.

28 (4) (A) The committee shall begin accepting applications on
29 *or before* March 15, 2015, and shall award credits at least two
30 times a year at dates set annually by the committee through 2019,
31 to the extent that allocations are available pursuant to Section
32 26011.9 of the Public Resources Code. To the extent reasonable
33 and consistent in carrying out the purposes of this section, the
34 committee shall consider how the timing of the state allocation
35 rounds correspond with the allocation schedule of the federal New
36 Markets Tax Credit Program.

37 (B) Within 20 calendar days after receipt of an application the
38 committee shall determine whether the application is complete or
39 whether additional information is necessary in order to fully
40 evaluate the application. If additional information is requested and

1 the qualified community development entity provides that
2 information within five business days, the application shall be
3 considered completed as of the original date of receipt. If the
4 qualified community development entity fails to provide the
5 information within the five-business-day period, the application
6 shall be denied and must be resubmitted in full with a new receipt
7 date.

8 (C) Within 20 calendar days after receipt of an application
9 determined to be complete by the committee, the committee shall
10 grant or deny the application in full or in part. If the committee
11 denies any part of the application, it shall inform the qualified
12 community development entity of the grounds for the denial.

13 (5) (A) The committee shall award tax credits to qualified
14 community development entities described in subparagraph (B)
15 of paragraph (4) of subdivision (c) in the order applications are
16 received by the committee, *subject to clause (i) or on a competitive*
17 *basis, pursuant to clause (ii).* ~~Applications received on the same~~
18 ~~day shall be deemed to have been received simultaneously.~~

19 (i) (I) In 2015, the committee shall only award tax credits to a
20 qualified community development ~~entity, exclusive of an entity~~
21 ~~described in clause (ii) of subparagraph (A) of paragraph (4) of~~
22 ~~subdivision (c) entity in the order applications are received by the~~
23 ~~committee.~~ In the 2016 to 2019 award cycles, inclusive, at least
24 60 percent of the credit allocation shall be awarded ~~to a qualified~~
25 ~~community development entity, exclusive of an entity described~~
26 ~~in clause (ii) of subparagraph (A) of paragraph (4) of subdivision~~
27 ~~(c) in the order applications are received by the committee to a~~
28 ~~qualified community development entity.~~ *Applications received on*
29 *the same day shall be deemed to have been received*
30 *simultaneously.* At the committee's discretion, a higher percentage
31 of credits may be ~~targeted to applicants exclusive of an awarded~~
32 ~~in the order that they are received.~~ *Qualified community*
33 *development entities that receive tax credit awards pursuant to*
34 *this clause shall commit to making investments in a manner that*
35 *engages community-based partnerships and local grassroots*
36 *stakeholders.*

37 (II) *An entity described in clause (ii) of subparagraph (A) of*
38 *paragraph (4) of subdivision (c) shall not receive a tax credit award*
39 *pursuant to this clause.*

(ii) The committee shall award up to 40 percent of the credit allocation in the 2016 to 2019, inclusive, award cycles, to a qualified community development entity, as described in clause (ii) of subparagraph (A) of paragraph (4) of subdivision (c) and subparagraph (B) of paragraph (4) of subdivision (c), on a competitive basis using blind scoring and a review committee that is comprised of at least a majority of community development finance practitioners *and at least one-third of the members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity*. A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any tax credit or other assistance from any applicant. ~~Priority~~

(iii) *In awarding credits on a competitive basis, priority shall be given to applications that can demonstrate that the credits will allow the entity to undertake qualified low-income community investments in a rural, suburban, or urban area that has been historically underserved and result in the greatest benefit to the hardest to serve lower income populations and most undercapitalized, or in newly established businesses, or in activities that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state for the purpose of scaling economic development activities that compliment regional industry clusters that—results result in the greatest benefit to the largest number of lower income individuals. All competitive applications shall demonstrate strong linkages with communities and neighborhoods in California low-income neighborhoods.*

(B) For applications described in clause (i) of subparagraph (A), in the event tax credit requests exceed the applicable annual allocation limitation of up to forty million dollars (\$40,000,000) in paragraph (8) of subdivision (c), the committee shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity

1 investments requested in such applications to the total amount of
2 qualified equity investments requested in all such applications
3 received on the same day.

4 (C) If a pending request cannot be fully certified due to this
5 limit, the committee shall certify the portion that may be certified
6 unless the qualified community development entity elects to
7 withdraw its request rather than receive partial certification.

8 (D) An approved applicant may transfer all or a portion of its
9 certified qualified equity investment authority to its controlling
10 entity or any subsidiary qualified community development entity
11 of the controlling entity, provided that the applicant and the
12 transferee notify the committee *within 30 calendar days* of such
13 transfer and include the information required in the application
14 with respect to such transferee with such notice.

15 (E) Within 60 calendar days of the committee sending notice
16 of certification, the qualified community development entity or
17 any transferee, under subparagraph (D), shall issue the qualified
18 equity investment and receive cash in the amount of the certified
19 amount. The qualified community development entity or transferee,
20 under subparagraph (D), must provide the committee with evidence
21 of the receipt of the cash investment within 65 *calendar* days of
22 the applicant receiving notice of certification. If the qualified
23 community development entity or any transferee, under
24 subparagraph (D), does not receive the cash investment and issue
25 the qualified equity investment within 60 calendar days of the
26 committee sending the certification notice, the certification shall
27 lapse and the entity may not issue the qualified equity investment
28 without reapplying to the committee for certification. Lapsed
29 certifications revert back to the committee and shall be reissued
30 in the following order:

31 (i) First, pro rata to applicants whose qualified equity investment
32 allocations were reduced pursuant to subparagraph (B) of paragraph
33 (5) under the annual allocation limitation of forty million dollars
34 (\$40,000,000) in paragraph (8) of subdivision (c).

35 (ii) Thereafter, in accordance with the application process.

36 (F) A qualified community development entity that issues
37 qualified equity investments must notify the committee of the
38 names of the entities that are eligible to utilize tax credits under
39 paragraph (3) of subdivision (b) pursuant to an allocation of tax

1 credits or change in allocation of tax credits or due to a transfer of
2 a qualified equity investment.

3 (6) (A) A qualified community development entity that issues
4 qualified equity investments shall submit a report to the committee
5 within the first five business days after the first anniversary of the
6 initial credit allowance date that provides documentation as to the
7 investment of at least 85 percent of the purchase price in qualified
8 low-income community investments in qualified active low-income
9 community businesses located in California. Such report shall
10 include all of the following:

11 (i) A bank statement of such qualified community development
12 entity evidencing each qualified low-income community
13 investment.

14 (ii) Evidence that such business was a qualified active
15 low-income community business at the time of such qualified
16 low-income community investment.

17 (iii) Any other information required by the committee.

18 (B) Thereafter, the qualified community development entity
19 shall submit an annual report to the committee within 60 *calendar*
20 days of the beginning of the calendar year during the seven years
21 following submittal of the report, pursuant to subparagraph (A).
22 No annual report shall be due prior to the first anniversary of the
23 initial credit allowance date. The report shall include, but is not
24 limited to, the following:

25 (i) The impact the credit had on the low-income community.

26 (ii) The amount of moneys used for qualified low-income
27 investments in qualified low-income community businesses.

28 (iii) The number of employment positions created and retained
29 as a result of qualified low-income community investments and
30 the average annual salary of such positions.

31 (iv) The number of operating businesses assisted as a result of
32 qualified low-income community investments, by industry and
33 number of employees.

34 (v) Number of owner-occupied real estate projects described in
35 subparagraph (E) of paragraph (6) of subdivision (c).

36 (vi) Location of the qualified low-income community businesses.

37 (e) In the case where the credit allowed by this section exceeds
38 the “net tax,” the excess may be carried over to reduce the “net
39 tax” in the following year, and the six succeeding years if
40 necessary, until the credit is exhausted.

1 (f) The committee shall annually report on its Internet Web site
2 the information provided by low-income community development
3 entities and on the geographic distribution of the credits.

4 (g) (1) The Franchise Tax Board may prescribe any rules or
5 regulations that may be necessary or appropriate to implement this
6 section. The Franchise Tax Board shall have access to any
7 documentation held by the committee relative to the application
8 and reporting of a qualified community development entity.

9 (2) A qualifying community development entity shall provide
10 the committee with the name, address, and tax identification
11 number of each investor and entity for which a credit was allocated
12 by the qualifying community development entity, pursuant to
13 paragraph (3) of subdivision (b). The committee shall provide this
14 information to the Franchise Tax Board in a manner determined
15 by the Franchise Tax Board.

16 (h) This section shall remain in effect only until December 1,
17 2028, and as of that date is repealed.

18 ~~SEC. 5. Section 18410.2 of the Revenue and Taxation Code~~
19 ~~is amended to read:~~

20 ~~18410.2. (a) The California Competes Tax Credit Committee~~
21 ~~is hereby established. The committee shall consist of the Treasurer,~~
22 ~~the Director of Finance, and the Director of the Governor's Office~~
23 ~~of Business and Economic Development, who shall serve as chair~~
24 ~~of the committee, or their designated representatives, and one~~
25 ~~appointee each by the Speaker of the Assembly and the Senate~~
26 ~~Committee on Rules. A Member of the Legislature shall not be~~
27 ~~appointed.~~

28 ~~(b) For purposes of Sections 12283, 17053.9, 17059.2, 23622.9,~~
29 ~~and 23689 the California Competes Tax Credit Committee shall~~
30 ~~do all of the following:~~

31 ~~(1) Approve or reject any written agreement for a tax credit~~
32 ~~allocation by resolution at a duly noticed public meeting held in~~
33 ~~accordance with the Bagley-Keene Open Meeting Act (Article 9~~
34 ~~(commencing with Section 11120) of Chapter 1 of Part 1 of~~
35 ~~Division 3 of Title 2 of the Government Code), but only after~~
36 ~~receipt of the fully executed written agreement between the~~
37 ~~taxpayer and the Governor's Office of Business and Economic~~
38 ~~Development.~~

39 ~~(2) Approve or reject any recommendation to recapture, in whole~~
40 ~~or in part, a tax credit allocation by resolution at a duly noticed~~

1 ~~public meeting held in accordance with the Bagley-Keene Open~~
2 ~~Meeting Act (Article 9 (commencing with Section 11120) of~~
3 ~~Chapter 1 of Part 1 of Division 3 of Title 2 of the Government~~
4 ~~Code), but only after receipt of the recommendation from the~~
5 ~~Governor's Office of Business and Economic Development~~
6 ~~pursuant to the terms of the fully executed written agreement.~~

7 ~~SEC. 6.~~

8 *SEC. 5.* Section 23622.9 is added to the Revenue and Taxation
9 Code, to read:

10 23622.9. (a) There is hereby created the California New
11 Markets Tax Credit Program as provided in this section, Section
12 12283, and Section 17053.9. The purpose of this program is to
13 stimulate private sector investment in lower income communities
14 by providing a tax incentive to ~~qualified~~ community and economic
15 development entities that can be leveraged by the entity to attract
16 private sector investment that in turn will be deployed by providing
17 financing and technical assistance to small- and medium-size
18 businesses and the development of commercial, industrial, and
19 community development projects, including, but not limited to,
20 facilities for nonprofit service organizations, light manufacturing,
21 and mixed-use and transit-oriented development. The California
22 Competes Tax Credit Committee shall administer this program as
23 provided in this section, Section 12283, and Section 17053.9.

24 (b) (1) For taxable years beginning on or after January 1, 2015,
25 and before January 1, 2027, there shall be allowed as a credit
26 against the "tax," as defined in Section 23036, an amount
27 determined in accordance with Section 45D of the Internal Revenue
28 Code, as amended by Public Law 111-5, Public Law 111-312, and
29 Public Law 112-240, as modified as set forth in this section.

30 (2) This credit shall be allowed only if the taxpayer holds the
31 qualified equity investment, or has been allocated a credit pursuant
32 to paragraph (3), on the credit allowance date and each of the six
33 following anniversary dates of that date.

34 (3) A tax credit allowed under this section shall not be sold and
35 is not a refundable credit. Tax credits allowed or allocated ~~to a~~
36 ~~partnership, limited liability company, or "S" corporation through~~
37 ~~a pass-thru entity~~ may be allocated to the ~~partners, members,~~
38 ~~managers, partners~~ or shareholders of such entity for their use in
39 accordance with the provisions of any agreement among such
40 ~~partners, members, managers, partners~~ or shareholders. Such

1 allocations shall not be considered a sale for the purposes of this
2 section.

3 (A) *The credit shall be allocated to the partners of a partnership*
4 *in accordance with the partnership agreement, regardless of how*
5 *the federal New Markets Tax Credit is allocated to the partners,*
6 *or whether the allocation of the credit under the terms of the*
7 *agreement has substantial economic effect, within the meaning of*
8 *Section 704(b) of the Internal Revenue Code.*

9 (B) *To the extent the allocation of the credit to a partner under*
10 *this section lacks substantial economic effect, any loss or deduction*
11 *otherwise allowable under this part that is attributable to the sale*
12 *or other disposition of that partner's partnership interest made*
13 *prior to the expiration of the recapture period set forth in Section*
14 *45D(g)(1) of the Internal Revenue Code shall not be allowed in*
15 *the taxable year in which the sale or other disposition occurs, but*
16 *shall instead be deferred until and treated as if it occurred in the*
17 *first taxable year immediately following the taxable year in which*
18 *that recapture period expires.*

19 (C) *Credits awarded to an "S" corporation shall be allocated*
20 *among the shareholders of the "S" corporation pro rata in*
21 *accordance with their respective pro rata shares, determined in*
22 *accordance with Subchapter S of Chapter 1 of Subtitle A of the*
23 *Internal Revenue Code and the regulations promulgated*
24 *thereunder.*

25 (c) Section 45D of the Internal Revenue Code is modified as
26 follows:

27 (1) (A) The references to "the Secretary" in Section 45D of the
28 Internal Revenue Code, *other than in Sections 45D(c)(1)(C) and*
29 *45D(d)(1)(C), are modified to read "the committee." committee."*

30 (B) For purposes of this section, "committee" means the
31 California Competes Tax Credit Committee established under
32 Section 18410.2.

33 (2) Section 45D(a)(2) of the Internal Revenue Code, relating to
34 applicable percentage, is modified by substituting for "(A) 5
35 percent with respect to the first 3 credit allowance dates, and (B)
36 6 percent with respect to the remainder of the credit allowance
37 dates" with the following:

38 (A) Zero percent with respect to the first two credit allowance
39 dates.

1 (B) Seven percent with respect to the third credit allowance
2 date.

3 (C) Eight percent with respect to the remainder of the credit
4 allowance dates.

5 (3) Section 45D(b)(3) of the Internal Revenue Code, relating
6 to safe harbor for determining use of cash, is modified by
7 substituting “qualified low-income community investments in
8 California” for “qualified low-income community investments.”

9 (4) (A) Section 45D(c)(1) of the Internal Revenue ~~Code, relating~~
10 ~~to qualified community development entities~~; *Code* is modified to
11 additionally include:

12 (i) A subsidiary community development entity of any such
13 qualified community development entity.

14 (ii) A nonprofit organization, pursuant to Section 23701,
15 certified by the committee as having a primary mission of serving
16 or providing investment capital in low-income communities and
17 the entity maintains accountability to residents of low-income
18 communities through their representation on any governing board
19 of the entity or on an advisory board of the entity. The committee
20 shall establish guidelines for certifying nonprofit organizations
21 pursuant to this subparagraph. The committee may include
22 reasonable conditions on the certification to effectuate the intent
23 of this section and may suspend or revoke a certification, after
24 affording the nonprofit organization notice and the opportunity to
25 ~~be heard~~, *heard and appeal*, if the committee finds that the
26 nonprofit organization no longer meets the requirements for
27 certification. Such nonprofit organization is not subject to the
28 requirement of subparagraph (B).

29 (B) Section 45D(c)(1) of the Internal Revenue ~~Code, relating~~
30 ~~to a qualified community development entity~~; *Code* is modified
31 to only include a qualified community development entity that has
32 entered into an allocation agreement with the Community
33 Development Financial Institutions Fund of the United States
34 Treasury Department, with respect to credits authorized by Section
35 45D of the Internal Revenue Code, that includes California within
36 the service area and is dated on or after January 1, 2012.

37 (5) Section 45D(d)(1)(A) of the Internal Revenue ~~Code, relating~~
38 ~~to qualified low-income community investments~~; *Code* is modified
39 to only include any capital or equity investment in, or loan to, a
40 qualified active low-income community business.

(6) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code, relating to qualified active low-income community businesses, Code is modified by substituting “any low-income community in California” for “any low-income community.”

(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code, relating to qualified active low-income community businesses, Code is modified as follows:

(i) Substituting “any low-income community in California” for “any low-income community.”

(ii) In determining whether the qualified active low-income community business uses a substantial portion of its tangible personal property within any low-income community, the term “substantial portion” shall mean “at least 40 percent” as calculated by the average value of the tangible property owned or leased and used within a California low-income community by the entity divided by the average value of the total tangible property owned or leased and used by the entity in California during the taxable year. The value assigned to the leased property by the entity must be reasonable.

(iii) Adding the provision that if the business meets the requirements of a qualified low-income community business at the time the investment is made, the business shall ~~continue to~~ *satisfy be treated as satisfying* the requirements of Section 45D(d)(2)(A)(ii) for the duration of the investment.

(C) *An entity complies with Section 45D(d)(2)(A)(i) of the Internal Revenue Code if, as calculated in subparagraph (B), it uses 50 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year.*

~~(C)~~

(D) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code, relating to qualified active low-income community business, a substantial portion of the services of which are performed in a low-income community, Code is modified to allow the services of employees of a service-based qualified business to be performed outside the low-income community. A service-based qualified business is a business that primarily earns revenue through providing intangible products and services.

~~(D) An entity complies with Section 45D(d)(2)(A)(i) of the Internal Revenue Code, relating to qualified active low-income community business, if, as calculated in subparagraph (B), it uses 50 percent of its tangible property, whether owned or leased, within any low-income community for any taxable year.~~

(E) (i) A qualified active low-income community business shall exclude any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (I) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (II) is the primary tenant of the real estate leased from the first business.

(ii) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in a California low-income community. The operating business shall meet all other conditions of a qualified active low-income business, except as modified by this paragraph and paragraph (7).

(iii) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a non-metropolitan area, with a median family income that does not exceed 60 percent of median family income for the State of California, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(7) Section 45D(e)(1) of the Internal Revenue Code, relating to determining the eligible low-income community Code is modified to add the following: “When the United States Census Bureau discontinues using the decennial census to report median family income on a census tract basis, census block group data shall be used based on the American Community Survey.”

(8) The following shall apply in lieu of the provisions of Section ~~45D(f)(1)~~ 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated: “The aggregate amount of credit that may be allocated in any calendar year pursuant to this section, Section 12283, and Section 17053.9 shall

be an amount equal to any unused portion of the one hundred million dollars (\$100,000,000) in exclusions, authorized pursuant to Section 6010.8, as determined by the California Alternative Energy and Advanced Transportation Financing Authority and reported to the committee, not to exceed forty million dollars (\$40,000,000). The committee shall limit the allocation of credits permitted under this section, Section 12283, and Section 17053.9 to a cumulative total of no more than two hundred million dollars (\$200,000,000). Any unused credits shall be returned to the committee ~~on~~ by March 1 of the year following allocation and the value of the unused credit shall be available for allocation in the following calendar years in accordance with the application process. Any recaptured credits shall be returned to the committee by March 1 of the year following recapture and the value of the recaptured credit shall be available for allocation in the following calendar years in accordance with clause (ii) of subparagraph (B) of paragraph (9). Reallocation credits shall not count against the forty million dollars (\$40,000,000) annual limit or the two hundred million dollars (\$200,000,000) cumulative limit.”

(9) (A) Section 45D(g)(2)(B) of the Internal Revenue Code, relating to credit recapture amount, is modified to substitute “Section 19101 of this code” for “section 6621”.

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, does not apply and is replaced with the following:

(i) The committee shall ~~recapture~~; *establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return, the tax credit allowed under this section if any of the following: return. The recapture process shall be applied if any of the following conditions set forth occur.*

(I) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this section is recaptured under Section 45D of the Internal Revenue Code. *The qualified community development entity shall send notice to the committee within 30 calendar days of being notified by the United States Treasury that any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this section is recaptured. The committee shall send written acknowledgment within five calendar*

1 *days of receipt of the qualified community development entity's*
2 *notice of potential noncompliance.* In such case the ~~committee's~~
3 recapture shall be proportionate to the federal recapture with respect
4 to such qualified equity investment.

5 (II) The qualified community development entity redeems or
6 makes principal repayment with respect to a qualified equity
7 investment prior to the seventh anniversary of the issuance of such
8 qualified equity investment. *The qualified community development*
9 *entity shall send notice to the committee within 30 calendar days*
10 *of redeeming or making principal repayments with respect to a*
11 *qualified equity investment prior to the seventh anniversary of the*
12 *issuance of such qualified equity investment. The committee shall*
13 *send written acknowledgment within five calendar days of receipt*
14 *of the qualified community development entity's notice of potential*
15 *noncompliance.* In such case the committee's recapture shall be
16 proportionate to the amount of the redemption or repayment with
17 respect to such qualified equity investment.

18 (III) The qualified community development entity fails to invest
19 an amount equal to at least 85 percent of the purchase price of the
20 qualified equity investment in qualified low-income community
21 investments in California within 12 months of the issuance of the
22 qualified equity investment and maintain at least 85 percent of
23 such level of investment in qualified low-income community
24 investments in California until the last credit allowance date for
25 the qualified equity investment. For purposes of this section, an
26 investment shall be considered held by a qualified community
27 development entity even if the investment has been sold or repaid
28 if the qualified community development entity reinvests an amount
29 equal to the capital returned to, or recovered by, the qualified
30 community development entity from the original investment,
31 exclusive of any profits realized, in another qualified low-income
32 community investment within 12 months of the receipt of such
33 capital. *The qualified community development entity shall send*
34 *notice to the committee within 30 calendar days of the 12-month*
35 *deadline for the reinvestment if the entity fails to meet any of the*
36 *reinvestment requirements. The committee shall send written*
37 *acknowledgment within five calendar days of receipt of the*
38 *qualified community development entity's notice of potential*
39 *noncompliance.* Periodic amounts received as repayment of
40 principal pursuant to regularly scheduled amortization payments

on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. A qualified community development entity shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(ii) Recaptured tax credits and the related qualified equity investment authority revert back to the committee and shall be reissued in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (B) of paragraph (5) of subdivision (d) by the allocation limitation of forty million dollars (\$40,000,000) in paragraph (8) of subdivision (c).

(II) Thereafter, in accordance with the application process.

(iii) (I) Enforcement of each of the recapture provisions shall be subject to a six month cure period. ~~No recapture~~ *Recapture* shall not occur until the qualified community development entity shall ~~have been given~~ *gives* notice of *potential* noncompliance to the committee and is afforded six months from the date of such notice to cure the noncompliance. *The six-month cure period shall begin on the day the committee sends written acknowledgment of the qualified community development entity's notice of the potential noncompliance. The qualified community development entity is responsible for addressing the circumstances of the potential noncompliance and providing all documentation to the committee necessary to demonstrate, to the committee's satisfaction, that those conditions no longer exist.*

(II) *Not more than 45 calendar days following the close of the cure period, the committee shall make a final determination as to whether the credit is to be recaptured. This determination shall be based on the review of the notice, information submitted by the qualified community development entity, and any other information the committee deems relevant to this determination.*

1 (III) *The committee shall post, and update monthly, a tally of*
2 *returned credits, pursuant to paragraph (8), and recaptured credits*
3 *pursuant to this paragraph. Within 30 calendar days of making*
4 *the final determination that the credit is to be recaptured, the*
5 *committee shall notify the Department of Insurance of the*
6 *determination including, but not limited to, the tax identification*
7 *number of the taxpayer.*

8 (10) Section 45D(i) of the Internal Revenue Code, relating to
9 regulations, shall not apply.

10 (11) If a qualified community development entity makes a
11 capital or equity investment or a loan with respect to a qualified
12 low-income building under the state Low-Income *Housing Tax*
13 Credit Program, the investment or loan is not a qualified
14 low-income community investment under this section.

15 (d) (1) The committee shall adopt guidelines necessary or
16 appropriate to carry out the purposes of this section *and meet the*
17 *requirements of Section 45D of the Internal Revenue Code, as*
18 *modified by this section.* The guidelines shall not disqualify a
19 low-income community investment for the single reason that public
20 or private incentives, loans, equity investments, technical
21 assistance, or other forms of support have been or continue to be
22 provided. The adoption of the guidelines shall not be subject to
23 the rulemaking provisions of the Administrative Procedure Act of
24 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
25 3 of Title 2 of the Government Code.

26 (2) The committee shall establish and impose reasonable fees
27 upon entities that apply for the allocation pursuant to this
28 subdivision and use the revenue to defray the cost of administering
29 the program. The committee shall establish the fees in a manner
30 that ensures that (A) the total amount collected equals the amount
31 reasonably necessary to defray the committee's costs in performing
32 its administrative duties under this section, and (B) the amount
33 paid by each entity reasonably corresponds with the value of the
34 services provided to the entity.

35 (3) In developing guidelines the committee shall adopt an
36 allocation process that does all of the following:

37 (A) Creates an equitable distribution process that ensures that
38 low-income communities across the state have an opportunity to
39 benefit from the program.

1 (B) Sets minimum organizational capacity standards that
2 applicants must meet in order to receive an allocation of credits
3 including, but not limited to, its business strategy, *targeted*
4 community outcomes, capitalization strategy, and management
5 capacity.

6 (4) (A) The committee shall begin accepting applications on
7 *or before* March 15, 2015, and shall award credits at least two
8 times a year at dates set annually by the committee through 2019,
9 to the extent that allocations are available pursuant to Section
10 26011.9 of the Public Resources Code. To the extent reasonable
11 and consistent in carrying out the purposes of this section, the
12 committee shall consider how the timing of the state allocation
13 rounds correspond with the allocation schedule of the federal New
14 Markets Tax Credit Program.

15 (B) Within 20 calendar days after receipt of an application the
16 committee shall determine whether the application is complete or
17 whether additional information is necessary in order to fully
18 evaluate the application. If additional information is requested and
19 the qualified community development entity provides that
20 information within five business days, the application shall be
21 considered completed as of the original date of receipt. If the
22 qualified community development entity fails to provide the
23 information within the five-business-day period, the application
24 shall be denied and must be resubmitted in full with a new receipt
25 date.

26 (C) Within 20 calendar days after receipt of an application
27 determined to be complete by the committee, the committee shall
28 grant or deny the application in full or in part. If the committee
29 denies any part of the application, it shall inform the qualified
30 community development entity of the grounds for the denial.

31 (5) (A) The committee shall award tax credits to qualified
32 community development entities described in subparagraph (B)
33 of paragraph (4) of subdivision (c) in the order applications are
34 received by the committee, *subject to clause (i) or on a competitive*
35 *basis, pursuant to clause (ii).* ~~Applications received on the same~~
36 ~~day shall be deemed to have been received simultaneously.~~

37 (i) In 2015, the committee shall only award tax credits to a
38 qualified community development entity, ~~exclusive of an entity~~
39 ~~described in clause (ii) of subparagraph (A) of paragraph (4) of~~
40 ~~subdivision (c) entity in the order applications are received by the~~

1 *committee. In the 2016 to 2019 award cycles, inclusive, at least*
2 *60 percent of the credit allocation shall be awarded to a qualified*
3 *community development entity, exclusive of an entity described*
4 *in clause (ii) of subparagraph (A) of paragraph (4) of subdivision*
5 *(e) in the order applications are received by the committee to a*
6 *qualified community development entity. Applications received on*
7 *the same day shall be deemed to have been received*
8 *simultaneously. At the committee's discretion, a higher percentage*
9 *of credits may be targeted to applicants exclusive of an awarded*
10 *in the order that they are received. Qualified community*
11 *development entities that receive tax credit awards pursuant to*
12 *this clause shall commit to making investments in a manner that*
13 *engages community-based partnerships and local grassroots*
14 *stakeholders.*

15 *(II) An entity described in clause (ii) of subparagraph (A) of*
16 *paragraph (4) of subdivision (c) shall not receive a tax credit award*
17 *pursuant to this clause.*

18 *(ii) The committee shall award up to 40 percent of the credit*
19 *allocation in the 2016 to 2019 award cycles, 2019, inclusive, award*
20 *cycles, to a qualified community development entity, as described*
21 *in clause (ii) of subparagraph (A) of paragraph (4) of subdivision*
22 *(c) and subparagraph (B) of paragraph (4) of subdivision (c), on*
23 *a competitive basis using blind scoring and a review committee*
24 *that is comprised of at least a majority of community development*
25 *finance practitioners and at least one-third of the members having*
26 *demonstrated experience in assessing organizational business*
27 *strategy, community outcomes, capitalization strategy, and*
28 *management capacity. A member of the review committee shall*
29 *not have a financial interest, which includes, but is not limited to,*
30 *asking, consenting, or agreeing to receive any commission,*
31 *emolument, gratuity, money, property, or thing of value for his or*
32 *her own use, benefit, or personal advantage for procuring or*
33 *endeavoring to procure for any person, partnership, joint venture,*
34 *association, or corporation any tax credit or other assistance from*
35 *any applicant. Priority*

36 *(iii) In awarding credits on a competitive basis, priority shall*
37 *be given to applications that can demonstrate that the credits will*
38 *allow the entity to undertake qualified low-income community*
39 *investments in a rural, suburban, or urban area that has been*
40 *historically underserved and result in the greatest benefit to the*

1 *hardest to serve lower income populations and most*
2 *undercapitalized, or in newly established ~~businesses~~ businesses,*
3 *or in activities that support neighborhood revitalization strategies*
4 *driven by local grassroots stakeholders in multiple low-income*
5 *communities across one or more regions or the state for the*
6 *purpose of scaling economic development activities that*
7 *compliment regional industry clusters that ~~results~~ result in the*
8 *greatest benefit to the largest number of lower income individuals.*
9 *All competitive applications shall demonstrate strong linkages*
10 *with communities and neighborhoods in California low-income*
11 *neighborhoods.*

12 (B) For applications described in clause (i) of subparagraph
13 (A), in the event tax credit requests exceed the applicable annual
14 allocation limitation of up to forty million dollars (\$40,000,000)
15 in paragraph (8) of subdivision (c), the committee shall certify,
16 consistent with remaining qualified equity investment capacity,
17 qualified equity investments of applicants in proportionate
18 percentages based upon the ratio of the amount of qualified equity
19 investments requested in such applications to the total amount of
20 qualified equity investments requested in all such applications
21 received on the same day.

22 (C) If a pending request cannot be fully certified due to this
23 limit, the committee shall certify the portion that may be certified
24 unless the qualified community development entity elects to
25 withdraw its request rather than receive partial certification.

26 (D) An approved applicant may transfer all or a portion of its
27 certified qualified equity investment authority to its controlling
28 entity or any subsidiary qualified community development entity
29 of the controlling entity, provided that the applicant and the
30 transferee notify the committee *within 30 calendar days* of such
31 transfer and include the information required in the application
32 with respect to such transferee with such notice.

33 (E) Within 60 calendar days of the committee sending notice
34 of certification, the qualified community development entity or
35 any transferee, under subparagraph (D), shall issue the qualified
36 equity investment and receive cash in the amount of the certified
37 amount. The qualified community development entity or transferee,
38 under subparagraph (D), must provide the committee with evidence
39 of the receipt of the cash investment within *65 calendar days* of
40 the applicant receiving notice of certification. If the qualified

1 community development entity or any transferee, under
2 subparagraph (D), does not receive the cash investment and issue
3 the qualified equity investment within 60 calendar days of the
4 committee sending the certification notice, the certification shall
5 lapse and the entity may not issue the qualified equity investment
6 without reapplying to the committee for certification. Lapsed
7 certifications revert back to the committee and shall be reissued
8 in the following order:

9 (i) First, pro rata to applicants whose qualified equity investment
10 allocations were reduced pursuant to subparagraph (B) of paragraph
11 (5) under the annual allocation limitation of forty million dollars
12 (\$40,000,000) in paragraph (8) of subdivision (c).

13 (ii) Thereafter, in accordance with the application process.

14 (F) A qualified community development entity that issues
15 qualified equity investments must notify the committee of the
16 names of the entities that are eligible to utilize tax credits under
17 paragraph (3) of subdivision (b) pursuant to an allocation of tax
18 credits or change in allocation of tax credits or due to a transfer of
19 a qualified equity investment.

20 (6) (A) A qualified community development entity that issues
21 qualified equity investments shall submit a report to the committee
22 within the first five business days after the first anniversary of the
23 initial credit allowance date that provides documentation as to the
24 investment of at least 85 percent of the purchase price in qualified
25 low-income community investments in qualified active low-income
26 community businesses located in California. Such report shall
27 include all of the following:

28 (i) A bank statement of such qualified community development
29 entity evidencing each qualified low-income community
30 investment.

31 (ii) Evidence that such business was a qualified active
32 low-income community business at the time of such qualified
33 low-income community investment.

34 (iii) Any other information required by the committee.

35 (B) Thereafter, the qualified community development entity
36 shall submit an annual report to the committee within 60 *calendar*
37 days of the beginning of the calendar year during the seven years
38 following submittal of the report, pursuant to subparagraph (A).
39 No annual report shall be due prior to the first anniversary of the

1 initial credit allowance date. The report shall include, but is not
2 limited to, the following:

3 (i) The impact the credit had on the low-income community.

4 (ii) The amount of moneys used for qualified low-income
5 investments in qualified low-income community businesses.

6 (iii) The number of employment positions created and retained
7 as a result of qualified low-income community investments and
8 the average annual salary of such positions.

9 (iv) The number of operating businesses assisted as a result of
10 qualified low-income community investments, by industry and
11 number of employees.

12 (v) Number of owner-occupied real estate projects described in
13 subparagraph (E) of paragraph (6) of subdivision (c).

14 (vi) Location of the qualified low-income community businesses.

15 (e) In the case where the credit allowed by this section exceeds
16 the “tax,” the excess may be carried over to reduce the “tax” in
17 the following year, and the six succeeding years if necessary, until
18 the credit is exhausted.

19 (f) The committee shall annually report on its Internet Web site
20 the information provided by low-income community development
21 entities and on the geographic distribution of the credits.

22 (g) (1) The Franchise Tax Board may prescribe any rules or
23 regulations that may be necessary or appropriate to implement this
24 section. The Franchise Tax Board shall have access to any
25 documentation held by the committee relative to the application
26 and reporting of a qualified community development entity.

27 (2) A qualifying community development entity shall provide
28 the committee with the name, address, and tax identification
29 number of each investor and entity for which a credit was allocated
30 by the qualifying community development entity, pursuant to
31 paragraph (3) of subdivision (b). The committee shall provide this
32 information to the Franchise Tax Board in a manner determined
33 by the Franchise Tax Board.

34 (h) This section shall remain in effect only until December 1,
35 2028, and as of that date is repealed.

36 ~~SEC. 7.~~

37 *SEC. 6.* This act provides for a tax levy within the meaning of
38 Article IV of the Constitution and shall go into immediate effect.

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